

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF
THE EXTRADITION OF
TOMMY MOLINA

CASE NO. CV
**PETITION FOR A WRIT OF
HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

Petitioner Tommy Molina, through Assistant Federal Public Defender Toni Leija-Wilson, petitions the Court under 28 U.S.C. § 2241 for a writ of habeas corpus seeking review of Magistrate Judge Zwart's August 7, 2023, Findings of Fact, Conclusions of Law and Order, as well as the Order dated August 7, 2023, certifying extradition. In support of this petition, Molina states:

1. Mr. Molina is currently in the custody of the United States government after having been arrested on a warrant for extradition to Germany.
2. According to German authorities, Molina is wanted for the murder of victim C.H. in Germany on April 20, 1978.
3. On August 4, 2023, United States Magistrate Judge Cheryl R. Zwart held an extradition hearing, pursuant to 18 U.S.C. § 3184 to determine: 1) whether the requirements for the extradition treaty between the United States and Germany had been satisfied; and 2) whether there was probable cause to believe that Mr. Molina committed the alleged offense. After the hearing, Judge Zwart

found that the charged offense is covered by the treaty and that there is probable cause to believe Mr. Molina committed the offense.

4. On August 7, 2023, Magistrate Zwart issued her Findings of Fact, Conclusions of Law and Order, finding there was probable cause to believe that Mr. Molina murdered a woman in Germany, attached as Exhibit 101. An Order of Certification and Committal for Extradition was issued on the same date, attached as Exhibit 102.

5. Petitioner's arguments will be set forth fully in his brief, wherein Petitioner asserts that he cannot be extradited because there is no probable cause to conclude that he committed the alleged crime for which Germany seeks his extradition.

6. Petitioner asserts that the Magistrate Judge misapplied the standard of probable cause which requires the evidence proffered by Germany in furtherance of extradition to be "both sufficiently reliable and of sufficient weight." *United States v. Kin-Hong*, 110 F.3d 103, 106, 120 (1st Cir. 1997).

a. The Magistrate Judge erroneously relied on the following evidence to support probable cause to believe Molina committed the crime of murder: DNA, witness statements, a pattern on Molina's car mat and tire tracks.

b. Two blood draws were taken from Molina, one test identified Molina as a contributor, another ruled him out. These conflicting DNA results are not "sufficiently reliable" to support extradition.

c. The bare statement by German officials that tire tracks at the crime scene appear to match those of Molina's tires is not evidence of sufficient weight.

d. The pattern on Molina's car mat compared to a pattern found on C.H.'s clothing does not demonstrate competent evidence amounting to probable cause.

7. Petitioner asserts that its 2020 blood draw by law enforcement in the United States, was in violation of the Fourth Amendment to the United States Constitution.

8. Petitioner further asserts that the Magistrate Judge erroneously disregarded Petitioner's evidence, supported by the evidence in the extradition package of the Republic of Germany, which explained away and negated probable cause.

a. Christina Molina testified at the extradition hearing to explain away Cindy Newstead's statements, however the Magistrate Judge erroneously found that her testimony was about attempting to contradict statements.

b. Petitioner offered other witness statements (included in Germany's extradition package) to explain Cindy Newstead's statements were not corroborated by other disinterested witnesses. The Magistrate Judge did not allow this evidence in at the extradition hearing.

9. Petitioner files this petition under 28 U.S.C. § 2241, which authorizes relief to a petitioner who is "in custody in violation of the Constitution or laws or

treaties of the United States.” He alleges that he has met the standards for release from custody.

10. A brief in support of this Motion has been filed herein and is incorporated by reference.

WHEREFORE Petitioner Tommy Molina requests that the Court grant his Motion for a Writ of Habeas Corpus under 28 U.S.C. § 2241 and vacate the Magistrate Judge’s order certifying extradition; deny the Republic of Germany’s request to extradite Petitioner; enter an order releasing Petitioner from custody pending extradition; schedule an oral argument and any other relief this Court deems just and reasonable.

Tommy Molina, Defendant

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